

RCW 39.10.415

Mechanical contractor/construction manager and electrical contractor/construction manager — Alternate contract award process.

(1) As an alternative to the subcontractor selection process outlined in RCW 39.10.380, a general contractor/construction manager that has a contract with a public body to perform general contractor/construction manager services, may, upon approval of the public body, select a mechanical subcontractor and/or an electrical subcontractor utilizing the process outlined in this section, provided that the anticipated value of the subcontract will exceed \$3,000,000.

(2) In order to utilize this alternative subcontractor selection process the general contractor/construction manager and the public body must determine that it is in the best interest of the project. In making this determination the general contractor/construction manager and the public body must:

(a) Conduct a hearing and provide an opportunity for any interested party to submit written and verbal comments regarding the justification for utilizing this alternative subcontractor selection process, the evaluation criteria, and weights for each criteria;

(b) Publish a notice of intent to utilize this alternative process in a legal newspaper published in or as near as possible to that part of the county where the public work will be constructed at least fourteen calendar days before conducting a public hearing;

(c) Ensure the public hearing notice includes the date, time, and location of the hearing, a statement justifying the basis and need for the alternative subcontractor selection process, and how interested parties may, prior to the hearing, obtain the evaluation criteria and applicable weight given to each criteria that will be used during evaluation;

(d) After the public hearing, consider written and verbal comments received and determine if utilizing this alternative subcontractor selection process is in the best interests of the project ; and

(e) Issue a written final determination to all interested parties. All protests of the decision to utilize this alternative subcontractor selection process must be in writing and submitted to the public body within seven calendar days of the final determination. Any modifications to the criteria and weights based on comments received during the public hearing process shall be included in the final determination.

(3) When utilizing this section, the general contractor/construction manager should select a mechanical contractor/construction manager and/or an electrical contractor/construction manager early in the life of the public works project.

(4) Contracts for the services of a mechanical contractor/ construction manager and/or an electrical contractor/construction manager under this section shall be awarded through a competitive process requiring the public solicitation of proposals for mechanical contractor/construction manager services and/or electrical contractor/construction manager services. The public solicitation of proposals shall include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;

(b) The reasons for using the mechanical contractor/construction manager and/or electrical contractor/construction manager selection process;

(c) A description of the minimum qualifications required of the firm;

(d) A description of the process the general contractor/construction manager and public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors;

(e) The form of the contract, including any contract for preconstruction services, to be awarded;

(f) The estimated maximum allowable subcontract cost; and

(g) The bid instructions to be used by the mechanical contractor/construction manager and/or electrical contractor/construction manager finalists.

(5) Evaluation factors for selection of the mechanical contractor/construction manager and/or electrical contractor/construction manager shall include, but not be limited to:

- (a) Ability of the firm's professional personnel;
- (b) The firm's past performance on similar projects;
- (c) The firm's ability to meet time and budget requirements;
- (d) The scope of work the firm proposes to perform with its own forces and its ability to perform that work;
- (e) The firm's proximity to the project location;
- (f) The firm's capacity to successfully complete the project;
- (g) The firm's approach to executing the project;
- (h) The firm's approach to safety on the project;
- (i) The firm's safety history; and
- (j) If the firm is selected as one of the most qualified finalists, the firm's fee and cost proposal.

(6) A general contractor/construction manager shall establish a committee to evaluate the proposals, which shall include at least one representative from the public body. After the committee has selected the most qualified finalists, these finalists shall submit final proposals, including sealed bids for the percent fee on the estimated maximum allowable subcontract cost, and the fixed amount for the subcontract general conditions work specified in the request for proposal. The general contractor/construction manager and public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals. The scoring of the non-price factors shall be made available at the opening of the fee and cost proposals. The general contractor/construction manager shall not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(7) Upon approval of the public body, the general contractor/construction manager may contract with the selected firm to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the mechanical contractor/construction manager and/or electrical contractor/construction manager during the construction phase.

(8) The maximum allowable subcontract cost for mechanical and/or maximum allowable subcontract cost for electrical shall be used to establish a total subcontract cost for which the mechanical contractor/construction manager and/or electrical contractor/construction manager shall provide a performance and payment bond. Total subcontract cost means the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable subcontract cost, and the percent fee on the negotiated maximum allowable subcontract cost. Maximum allowable subcontract cost means the maximum cost to complete the work specified for the subcontract, including the estimated cost of work to be performed by the mechanical contractor/construction manager's and/or electrical contractor/construction manager's own forces, a percentage for risk contingency, negotiated support services, and approved change orders. The maximum allowable subcontract cost shall be negotiated between the general contractor/construction manager and the selected firm(s) when the construction documents and specifications are at least ninety percent complete. Final agreement on the maximum allowable subcontract cost is subject to the approval of the public body.

(9) A mechanical contractor/construction manager and/or electrical contractor/construction manager selected under this section may perform work with its own forces. In the event the mechanical contractor/construction manager

and/or electrical contractor/construction manager elects to subcontract some of the work that is part of its contract, it must select the subcontractor(s) utilizing the procedure outlined in RCW 39.10.380.

(10) If the subcontract work of the mechanical contractor/construction manager and/or electrical contractor/construction manager is completed for less than the maximum allowable subcontract cost, any savings not otherwise negotiated as part of an incentive clause shall become part of the risk contingency included in the general contractor/construction manager's maximum allowable construction cost. If the subcontract work of the mechanical contractor/construction manager and/or electrical contractor/construction manager is completed for more than the maximum allowable subcontract cost, the additional cost is the responsibility of the mechanical contractor/construction manager and/or electrical contractor/construction manager. An independent audit, paid for by the public body, shall be conducted upon completion of the contract to confirm the proper accrual of costs as outlined in the contract.

(11) If the general contractor/construction manager is unable to negotiate a satisfactory maximum allowable subcontract cost with the firm selected that the public body and the general contractor/construction manager determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the general contractor/construction manager may negotiate with the next highest scored firm until an agreement is reached or terminate the process.

(12) If the general contractor/construction manager receives a written protest from a mechanical contractor/construction manager or an electrical contractor/construction manager, the general contractor/construction manager shall not execute a contract for the work subject of the protest with anyone other than the protesting bidder, without first providing at least two full business days' written notice to all bidders of the intent to execute a contract for the subcontract bid package. The protesting bidder must submit written notice to the general contractor/construction manager of its protest no later than two full business days following the bid opening. Intermediate Saturdays, Sundays, and legal holidays are not counted.